

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

Stephen R. Smerek (SBN: 208343)
ssmerek@winston.com
WINSTON & STRAWN LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750

Attorneys for Defendant
LOUIS VUITTON NORTH AMERICA, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEANNA MOREY, an individual, on behalf of)
herself and all others similarly situated,)

Plaintiff,)

vs.)

LOUIS VUITTON NORTH AMERICA, INC.,)
and DOES 1 through 50,)

Defendants.)

Case No. '11CV1517 L BLM

DEFENDANT'S NOTICE OF REMOVAL

Complaint Filed: May 20, 2011
Complaint Served: June 9, 2011

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1332(d), defendant Louis Vuitton North America, Inc. ("LVNA"), without waiving any defenses it may have, hereby removes this action to this Court from the Superior Court of the State of California for the County of San Diego on the grounds stated below.

INTRODUCTION

1. On May 20, 2011, plaintiff Deanna Morey ("Plaintiff") commenced this putative class action as Case No. 37-2011-00091660-CU-PO-CTL in the Superior Court of the State of California for the County of San Diego by filing a complaint (the "Complaint") captioned *Deanna Morey, an individual, on behalf of herself and all others similarly situated vs. Louis Vuitton North America,*

1 *Inc.; and Does 1 through 50.* The Complaint is signed by Plaintiff's attorney Gene J. Stonebarger.
2 Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Complaint, and the docket in the state
3 court, are attached hereto as Exhibits 1 and 2, respectively.

4 2. The Complaint purports to assert a single cause of action against LVNA for violations of
5 California Civil Code § 1747.08. *See* Exh. 1, Cmpl. at ¶¶ 29-32. The Complaint seeks to certify a
6 statewide class consisting of all persons in California from whom Defendant requested and recorded
7 personal identification information in conjunction with a credit card transaction and claims statutory
8 civil penalties, distribution of any moneys recovered on behalf of the class of similarly situated
9 consumers via fluid recovery or cy pres recovery, prejudgment interest at the legal rate, and
10 attorneys' fees and costs. *See* Exh. 1, Cmpl. at ¶¶ 22, 29-32 and Prayer for Relief. LVNA denies
11 that it engaged in any unlawful conduct or is liable to Plaintiff.

12 3. Plaintiff is a resident of the State of California and thus a California citizen both now and
13 at the time the Complaint was filed. *See* Exh. 1, Cmpl. at ¶ 7. LVNA is a citizen of the State of
14 Delaware with its principal place of business in the State of New York. *See* Exh. 2, Declaration of
15 Kathryn Kolanda ("Kolanda Decl.") at ¶ 2; *see also* Exh. 1, Cmpl. at ¶ 9. LVNA is not a citizen of
16 the State of California, and does not have its principal place of business in the State of California.

17 4. LVNA hereby removes this action to this Court, pursuant to 28 U.S.C. § 1441(a), based
18 on original jurisdiction under the Class Action Fairness Act ("CAFA") pursuant to 28 U.S.C. §
19 1332(d). Venue in this judicial division is proper under 28 U.S.C. § 1441(a) because the action is
20 currently pending in the county embracing this division.

21 REMOVAL JURISDICTION

22 5. This is a civil action over which this Court has original jurisdiction under 28 U.S.C.
23 § 1332(d) because: (a) it is a class action, (b) between a class of plaintiffs, a member of which is a
24 citizen of California, and the defendant is a citizen of a different state, and (c) the matter in
25 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs.

26 a. Plaintiff filed the present civil action as a class action as that term is defined for
27 purposes of federal subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(1)(B).
28

b. Plaintiff is a citizen of the State of California, and LVNA is a citizen of the State of Delaware and the State of New York. *See* Exh. 2, Kolanda Decl. at ¶ 2; *see also* Exh. 1, Cmpl. at ¶¶ 7, 9. Accordingly, there is minimal diversity of citizenship pursuant to 28 U.S.C. § 1332(d)(2)(A).

c. Plaintiff seeks civil penalties in the amount of up to one thousand dollars (\$1,000) per alleged violation. *See* Exh. 1, Cmpl. at ¶¶ 27, 32. Claims brought under § 1747.08 must be filed within one year of the alleged violation. *See TJX Companies, Inc. v. Superior Court*, 163 Cal. App. 4th 80, 84-87 (2008). During the one year period prior to the filing date of May 20, 2012, LVNA retail locations in California processed substantially in excess of 5,000 credit card transactions. *See* Exh. 2, Kolanda Decl. at ¶ 3. Accordingly, the amount in controversy exceeds the jurisdictional sum or value of five million dollars (\$5,000,000), exclusive of interest and costs, pursuant to 28 U.S.C. § 1332(d)(2).

6. Because this Court has original jurisdiction over the present civil action under 28 U.S.C. § 1332 as set forth above, removal is proper pursuant to 28 U.S.C. § 1441(a).

TIMELINESS OF REMOVAL

7. The Complaint was personally served on LVNA's agent for service of process on June 9, 2011. This Notice of Removal therefore is timely filed pursuant to 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

CONCLUSION

8. For the foregoing reasons, this case is properly and timely removed to this Court pursuant to 28 U.S.C. § 1441, and the parties should litigate this action in this Court. By removing this action, LVNA does not waive any defenses that may exist.

Dated: July 8, 2011

WINSTON & STRAWN LLP

By: s/ Stephen R. Smerek
Attorneys for Defendant
E-mail: ssmerek@winston.com

LA:296650.2

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

'11CV1517L BLM

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Deanna Morey, an individual, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stonebarger Law, 75 Iron Point Circle, Suite 145, Folsom, CA 95630

DEFENDANTS

Louis Vuitton North America, Inc., and Does 1 through 50

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Winston & Strawn LLP, 333 S. Grand Ave., Los Angeles, CA 90071

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
~~28 U.S.C. Sec. 1332(d)~~ 28:1332 Diversity - Other Contract

Brief description of cause:
 California's Song-Beverly Credit Card Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/8/2011

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE